Nos. 16-1436 & 16-1540

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Supreme Court of the United States

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DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,
Respondents.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
STATE OF HAWAII, ET AL.,
Respondents.

On Writ of Certiorari to the United States Courts of Appeals for the Fourth and Ninth Circuits

BRIEF OF THE PORT OF SEATTLE AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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BRIEF OF *AMICUS CURIAE* THE PORT OF SEATTLE SUPPORTING RESPONDENTS AND URGING AFFIRMANCE

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae the Port of Seattle has a significant interest in the uniform application of a constitutional and statutorily authorized system of immigration as the operator of the port of entry into the United States for thousands of passengers arriving from the Middle East and other regions on a weekly basis. Among other responsibilities, the Port of Seattle operates Seattle-Tacoma International Airport ("Sea-Tac Airport"). More than 20 passenger airlines, serving approximately two dozen international cities and nearly 80 domestic destinations, operate out of Sea-Tac Airport. Specifically, the international carrier Emirates Airline, the Middle East's largest airline, operates daily flights into and out of the airport. Because Sea-Tac Airport is an international port of entry, U.S. Customs and Border Protection employs

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[1] Pursuant to this Court's Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae* and counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to this Court s Rule 37.3(a), the Port of Seattle notes that all parties have consented to the filing of this brief; their consents have been filed with the Clerk of this Court.

officers at the airport, charged with enforcement of the immigration laws.

As the primary international airport in the region, Sea-Tac Airport generates more than 100,000 direct jobs, more than $2.8 billion in direct earnings, and $565 million in state and local taxes, according to recent estimates. The airport is undergoing a $1.9 billion dollar renovation in anticipation of growing international travel to and through Seattle.

In 2015, Emirates Airline added a second non-stop flight from Dubai to Seattle, which the Port estimated at the time would add $75 million in economic impact and 1,400 jobs to the region. In April 2017, Emirates canceled this second flight, citing in part a drop in demand following the issuance of President Donald J. Trump's executive orders temporarily halting entry to the United States for citizens of six (initially seven) countries in the Middle East.

In addition to the direct economic harm the Port has experienced stemming from the executive orders, the Port, like many points of entry in the United States, experienced the well-documented chaos resulting from the enforcement of the executive orders. Under the first executive order, the Port encountered differing and confusing interpretations of the scope of the travel ban, based on visa status, legal status, or the purpose of entry. Major international airports like Sea-Tac Airport had to manage the sensitive issues arising from the detainment of numerous travelers, including connecting such individuals with appropriate legal assistance, ensuring compliance with legal mandates, and maintaining the daily functioning of a major international airport amid an influx of affected

families, attorneys, and protestors. *Statement by the Port of Seattle in Response to Trump Administration Immigration Ban*, PORT OF SEATTLE (Jan. 31, 2017), https://www.portseattle.org/Newsroom/News-Releases/Pages/default.aspx?year=2017#640. At one point, a Port commissioner at the gate of a departing airline worked to facilitate conversations between legal representatives, federal agencies, and a district court judge about whether two travelers would be detained, allowed to enter the country, or sent back to the countries they had just left. *Id.* A flurry of court orders enjoined the application of the first executive order as to individuals and, finally, on a nationwide basis. Absent a uniform, nationwide injunction, such litigation would persist based on the specific situations of individual plaintiffs. Accordingly, the Port of Seattle has a keen interest in the uniform application of immigration laws that comply with constitutional and statutory mandates.

SUMMARY OF ARGUMENT

On January 27, 2017, President Trump signed Executive Order No. 13,769 ("EO-1"), which, among other provisions, banned the entry into the United States for 90 days of citizens from seven majority-Muslim countries and froze the admission of refugees from those countries for 120 days. Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017). EO-1 took effect immediately, leaving an untold number of people in transit to the United States stranded and wreaking havoc on the country's uniform system of immigration. The widespread confusion spurred numerous lawsuits, including one by the State of Washington. The U.S. District Court for the Western District of Washington

enjoined EO-1's enforcement on a nationwide basis, which the Ninth Circuit declined to stay. *Washington v. Trump*, 2017 WL 462040, at *2–3 (W.D. Wash. Feb. 3, 2017), *aff'd*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam).

In light of these legal challenges, President Trump issued a new executive order ("EO-2") on March 6, 2017. Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017). EO-2 largely retained the previously challenged provisions and prompted a second round of lawsuits. As relevant here, EO-2 prevents the entry into the United States of citizens of six countries for a 90-day period, suspends travel by refugees and decisions on refugee applications for 120 days, and lowers the cap on the number of refugees that may be admitted to the United States in 2017.

Before EO-2 took effect, the U.S. District Court for the District of Hawaii enjoined enforcement of the travel and refugee bans. The U.S. District Court for the District of Maryland also enjoined the travel ban portion of EO-2. The Fourth and Ninth Circuits each affirmed. The Fourth Circuit determined that the travel ban has a primarily religious purpose and likely violates the Establishment Clause. The Ninth Circuit held that the travel and refugee bans run afoul of several provisions of the Immigration and Nationality Act ("INA").

As respondents have ably explained, the challenged provisions of EO-2 cannot withstand constitutional

scrutiny and violate the INA.[2] Petitioners, however, would have this Court forgo review of EO-2 or, at the very least, limit the relief to individual plaintiffs. Pet. Br. 79-82. But the challenged provisions of EO-2 inflict harms that more than satisfy the standing inquiry for all respondents. And nothing short of a nationwide injunction will remedy that harm.

I. As to the justiciability inquiry, EO-2 has imposed real and tangible harms on not only the particular respondents but many other individuals and entities. As respondents correctly have argued, the executive order imposes intangible harms by condemning a particular religion. IRAP Br. 15–25; Hawaii Br. 18–21. Beyond such harms, however, the organizational and state plaintiffs have experienced significant and quantifiable economic injury from restrictions imposed by the executive order. These harms alone are sufficient to confer Article III standing, particularly at this early stage of the case, for both the Establishment Clause and INA challenges. As the significant harms experienced by *amicus curiae* the Port of Seattle confirm, the economic harms alleged by Hawaii, the International Refugee Assistance Project ("IRAP"), HIAS, and the Middle East Studies Association ("MESA"), are not unique to the plaintiffs here. Indeed, the Ninth Circuit previously determined that the State of Washington had standing to challenge the first executive order. *Washington v. Trump*, 847

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[2] Br. for Respondents State of Hawaii, *et al.* 28–60 ("Hawaii Br."); Br. of Respondents International Refugee Assistance Project, *et al.* 31–59 ("IRAP Br.").

F.3d 1151, 1158–59 (9th Cir. 2017). Federal courts thus have the ability to review the validity of EO-2 and to grant the relief requested by respondents.

II. As to the proper scope of the injunction, the courts of appeals each correctly affirmed imposition of a nationwide injunction to prevent application of the challenged provisions. Under both the Ninth Circuit's statutory approach and the Fourth Circuit's constitutional approach, the enjoined provisions of the executive order are facially invalid. Thus, it is appropriate to prevent the invalid provisions from being implemented anywhere in the nation. In addition, the strong interest in ensuring the uniform application of the immigration laws justifies imposition of a nationwide injunction. Absent a nationwide injunction, points of entry would have to apply different standards to the admission of individuals who may be subject to EO-2's travel and refugee bans. For instance, under the government's approach, an individual's ultimate destination in the United States could determine whether the person is subject to EO-2's restrictions upon entry to the United States through any international airports in the country. Such an approach would undermine the uniform enforcement of the immigration laws and risk a repeat of the chaos that resulted from EO-1.

ARGUMENT

I. THE ECONOMIC INJURIES SUFFERED BY THE STATE OF HAWAII AND THE ORGANIZATIONAL RESPONDENTS ARE INDEPENDENTLY SUFFICIENT TO CONFER STANDING TO SUE

Petitioners challenge the justiciability of the present controversy, arguing that respondents do not have standing. Pet. Br. 27–35. But respondents, which include individual plaintiffs as well as the State of Hawaii and several non-profit organizations, have suffered harm stemming from the travel and refugee admission restrictions. Indeed, many states and organizations are experiencing the same harms as respondents here, as demonstrated by the numerous lawsuits challenging EO-2. Such harm can be traced directly to the executive order.

A. Economic Injury Is Sufficient To Confer Article III Standing

The "gist of the question of standing" asks whether a plaintiff has a "personal stake in the outcome of the controversy." *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). To establish Article III standing, a plaintiff must demonstrate "that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury." *Id.* (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Standing "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the

manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. Only a single plaintiff need demonstrate standing. *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) ("[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement."); *Bowsher v. Synar*, 478 U.S. 714, 721 (1986).

For the Establishment Clause, a plaintiff may demonstrate standing by alleging that a statute or policy that violates the Establishment Clause injures the plaintiff's economic well-being. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 118 (1982) (plaintiff denied liquor license because of store's proximity to a church, thus resulting in economic loss); *Torcaso v. Watkins*, 367 U.S. 488, 489–90 (1961) (plaintiff prohibited from holding office in Maryland because he refused to swear that he believed in God); *Two Guys from Harrison–Allentown, Inc. v. McGinley*, 366 U.S. 582, 592 (1961) (plaintiff prosecuted for violating blue laws and prohibited from selling goods on Sunday); *McGowan v. Maryland*, 366 U.S. 420, 430–31 (1961) ("Appellants here concededly have suffered direct economic injury, allegedly due to the imposition on them of the tenets of the Christian religion. We find that, in these circumstances, these appellants have standing to complain that the statutes are laws respecting an establishment of religion." (footnote omitted)). Likewise, economic injuries confer Article III standing to challenge the President's invocation of powers under the INA. *See, e.g.*, *Mendoza v. Perez*, 754 F.3d 1002, 1011 (D.C. Cir. 2014) (economic injury in the form of exposure to competition provides constitutional standing to challenge immigration regulation); *Int'l*

Longshoremen's & Warehousemen's Union v. Meese, 891 F.2d 1374, 1379 (9th Cir. 1989) (same as to agency action). Here, at least one respondent from each action has sufficiently demonstrated an economic injury sufficient to satisfy the standing requirements for challenging the specific provisions of EO-2 as violating the Establishment Clause and the INA.

1. The State of Hawaii has demonstrated economic harm resulting from the Section 2(c) travel ban, the Section 6(a) refugee ban, and the lowered cap on refugees in Section 6(b). Specifically, at the preliminary injunction stage, Hawaii has made an adequate showing that it will suffer economic harm from the loss of students and faculty at its universities, from the drop in tourism to the state from the banned countries, and from the loss of funds to assist with the settlement of refugees. Hawaii Br. 22–23.

Hawaii has standing by virtue of the direct injury the executive order inflicts in the forms of a loss of specific tax revenues and impairment of Hawaii's tourism industry. *See Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1303 (2017) (municipality's "claims of financial injury . . . specifically, lost tax revenue and extra municipal expenses" satisfies Article III); *Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992) (state has standing based on "direct injury in the form of a loss of specific tax revenues"); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 110–11 (1979) (village may challenge action that "directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services"); *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1198–99 (9th Cir. 2004);

Colo. River Indian Tribes v. Town of Parker, 776 F.2d 846, 848–49 (9th Cir. 1985). EO-2 chills tourism, decreasing State revenues, including taxes. As the Hawaii district court found, "preliminary data from the Hawaii Tourism Authority" that "includ[es] visitors from Iran, Iraq, Syria, and Yemen" suggests that "during the interval of time that the first Executive Order was in place, the number of visitors to Hawai'i from the Middle East dropped." *Hawai'i v. Trump*, 241 F. Supp. 3d 1119, 1130 (D. Haw. 2017). Relating specifically to Sections 6(a) and 6(b), the State of Hawaii will lose both tax payments and economic contributions from refugees that settle in Hawaii. *See* Hawaii Br. 22–23.

Hawaii also has standing because the travel ban prevents nationals of six countries from entering the United States, thereby precluding students and faculty from joining the state universities. As the Ninth Circuit correctly concluded: "EO2 harms the State's interests because (1) students and faculty suspended from entry are deterred from studying or teaching at the University; and (2) students who are unable to attend the University will not pay tuition or contribute to a diverse student body." *Hawaii v. Trump*, 859 F.3d 741, 765 (9th Cir. 2017). For this same reason, the Ninth Circuit correctly determined that the State of Washington had standing in a challenge to the first executive order. *Washington*, 847 F.3d at 1161.

Contrary to petitioners' argument, Pet. Br. 33–34, the State of Hawaii may assert these economic

injuries.[3] *See, e.g.*, *Texas v. United States*, 809 F.3d 134, 155–62 (5th Cir. 2015) (holding the State of Texas had standing to challenge the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program based on its alleged injury of subsidizing driver's licenses to DAPA beneficiaries), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016). And such injuries are not, as petitioners contend, "merely the incidental effects of the United States' application of federal law to aliens outside the United States." Pet. Br. 34. Rather, they are a direct effect of prohibiting the travel of 180 million people to the United States.

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[3] Separately, under the "third party standing" doctrine, injuries to state universities give states standing to assert the rights of the students, scholars, and faculty affected by the EO-2. *See Singleton v. Wulff*, 428 U.S. 106, 114–16 (1976) (explaining that third-party standing is allowed when the third party's interests are "inextricably bound up with the activity the litigant wishes to pursue"; when the litigant is "fully, or very nearly, as effective a proponent of the right" as the third party; or when the third party is less able to assert her own rights); *see also Craig v. Boren*, 429 U.S. 190, 195 (1976) (explaining that vendors "have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function"). The third-party standing doctrine provides an independent basis for standing, but its invocation is not necessary to hold that respondents have standing here.

2. Likewise, wholly apart from the injuries experienced by their clients, respondent non-profit organizations HIAS, IRAP, and MESA have demonstrated sufficient economic injury to establish standing. EO-2 imposes direct economic harm on these organizations in a variety of ways, such as the otherwise unnecessary expenditure of funds to contend with the consequences of EO-2's travel and refugee bans, the diversion of funds from the organization's primary mission, and the loss of funds through restrictions on entry. To hold otherwise would veer from settled precedent establishing that non-profit advocacy organizations have standing under such circumstances in cases that implicate their interests, the effects of which would reach far beyond this case.

For instance, as respondents explain, MESA's members cannot attend its annual conference. IRAP Br. 23–24. The lower number of submissions for MESA's conference translated to a loss of $18,000. *Id.* at 24. The travel ban thus directly impedes MESA's ability to carry out its central purposes and results in quantifiable economic harm, which is sufficient to confer standing. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (holding "concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes" injury in fact); *see also Equal Rights Ctr. v. Equity Residential*, 798 F. Supp. 2d 707, 724 & n.10 (D. Md. 2011) (holding plaintiff suffered injury in fact stemming from diversion of resources that impeded organization's growth and impaired ability to carry out core mission).

In this same vein, IRAP and HIAS have had to devote resources to confronting the ramifications of EO-2's travel and refugees bans. IRAP Br. 24; *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 578 (4th Cir. 2017) (noting IRAP and HIAS "claim that they have already diverted significant resources to dealing with EO-2's fallout"); *see also Hawaii v. Trump*, —— F. 3d ——, 2017 WL 3911055, at *11–12 (9th Cir. Sept. 7, 2017) (detailing the economic injuries and consequent interference with organizational purpose experienced by refugee assistance organizations resulting from EO-2). And IRAP and HIAS, which both assist in the settlement of refugees, have alleged "lost revenue arising from a reduction in refugee cases that may necessitate reductions in staff." *Int'l Refugee Assistance Project v. Trump v. Trump*, 241 F. Supp. 3d 539, 549 (D. Md. 2017), *aff'd in part, vacated in part*, 857 F.3d 554 (4th Cir. 2017). Such loss, directly related to the temporary ban and lower refugee admission cap, satisfies the Article III standing inquiry. *See Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 739 (S.D. Ind. 2016) (recognizing that, although funding to a refugee resettlement organization could be repaid, "in the interim, its organizational objectives would be irreparably damaged by its inability to provide adequate social services to its clients"), *aff'd*, 838 F.3d 902 (7th Cir. 2016).

The organizational respondents thus have demonstrated Article III standing by virtue of these economic injuries.

B. Respondents' Injuries Fall Within The Zone Of Interest Of The INA

Respondents also meet the requirement that their claims vindicate interests that "fall within the zone of interests protected" by the INA. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014) (internal quotation marks omitted). The INA specifically addresses the admission of students, faculty, tourists, and refugees from abroad, and therefore the challenged provisions fall squarely within the zone of interests protected by the INA.

As an initial matter, the INA specifically provides for the admission of nonimmigrant students for study in the United States. *See* 8 U.S.C. § 1101(a)(15)(F) (defining eligible nonimmigrant students); 8 C.F.R. § 214.2(f) (identifying eligibility requirements for nonimmigrant college students). The same is true for nonimmigrant scholars and teachers. *See, e.g.*, 8 U.S.C. § 1101(a)(15)(J) (defining eligible nonimmigrant "student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill"); *id.* § 1101(a)(15)(H) (identifying aliens coming to the United State temporarily to perform services in a specialty occupation). International students and visiting faculty may qualify for a visa on a number of different grounds. *See Directory of Visa Categories*, U.S. DEP'T STATE, https://travel.state.gov/content/visas/en/general/all-visa-categories.html (last visited Sept. 18, 2017). These statutory provisions make clear that the injuries asserted by the State of Hawaii and, for instance, MESA conference attendees, fall within the zone of interest of the INA.

Similarly, the INA defines "refugee" and provides the policy and procedure for determining the number of refugees admitted. *See* 8 U.S.C. § 1101(a)(42) (defining "refugees"); *id.* § 1157 (providing the procedure for determining the number of refugee admissions). Congress amended these provisions to provide a "systematic procedure" for the admission of refugees into the United States, as well as "uniform provisions for the effective resettlement and absorption of those refugees who are admitted." Refugee Act of 1980, Pub. L. No. 96-212, § 101, 94 Stat. 102, 102 (1980). Further, the INA establishes a grant program for the resettlement of refugees. *See* 8 U.S.C. § 1522(a)(4)(B); *id.* § 1522(b)(2)–(5) (provisions related to medical screening, initial medical treatment, and educational needs of refugees). States also receive grants that they may provide to organizations that assist with resettlement efforts, such as helping refugees become self sufficient in their new country through job training and English courses. *See* 8 U.S.C. § 1522(a)(4)(B)(ii), (iii). Thus, Hawaii's interest in effectuating its refugee resettlement policies and programs, and the interests of the organizational respondents in assisting in the settling of refugees, fall within the core purpose of the INA.

II. THE NATIONWIDE INJUNCTION IS APPROPRIATE AND WARRANTED

Both the Fourth and Ninth Circuits issued nationwide injunctions as to the portions of EO-2 each court of appeals held invalid. *Int'l Refugee Assistance Project*, 857 F.3d at 604–05; *Hawaii*, 859 F.3d at 787–88. This Court should uphold the full scope of the injunctions, as respondents urge. Hawaii Br. 60–61;

IRAP Br. 59–61. The enjoined provisions of EO-2 are facially invalid and not simply invalid as applied to one individual or class of people. A nationwide injunction thus is necessary to redress the legal violation. Separately, as respondents also correctly argue, a nationwide injunction is appropriate to ensure the uniform application of the immigration laws. *See* Hawaii Br. 61. The limitations the government proposes for the injunctive relief, Pet. Br. 78–79, 82–83, are neither tailored to the legal violation nor feasible. To the contrary, such an approach would result in a haphazard application of immigration law, requiring the use of different standards for entry to the United States for individuals subject to EO-2's travel and refugee bans.

A. The Facial Invalidity Of The Challenged Provisions Of EO-2 Justifies Issuance Of A Nationwide Injunction

Where a law is invalid on its face, a nationwide injunction is appropriate. This Court has made clear that when a plaintiff claims that a law is facially vague and violates his or her Constitutional rights, that "party seeks to vindicate not only his [or her] own rights, but those of others who may also be adversely impacted by the statute in question." *City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999); *see also Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 958 (1984) ("Facial challenges to overly broad statutes are allowed not primarily for the benefit of the litigant, but for the benefit of society—to prevent the statute from chilling the [constitutional] rights of other parties not before the court."). "In this sense, the threshold for

facial challenges is a species of third party (*jus tertii*) standing." *Morales*, 527 U.S. at 55 n.22.

As petitioners correctly note, the courts of appeals held that "categorical relief was necessary because a more limited injunction would not cure the alleged legal defects in the Order." Pet. Br. 82. Such "legal defects" are that provisions of EO-2, *on their face*, violate the Establishment Clause, per the Fourth Circuit, and the INA, per the Ninth Circuit. Under these circumstances, "the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). The facial invalidity of Sections 2(c), 6(a), and 6(b) thus warrants a nationwide injunction.

To the extent the government argues that the scope of relief must be limited to that necessary to"redress cognizable injuries to respondents themselves," Pet. Br. 78, the government's argument suffers from a second flaw: the government neglects to consider the full slate of plaintiffs. For instance, the government contends that the Fourth Circuit based its nationwide injunction "on two purported injuries to a single respondent," whose wife has now received a visa. Pet. Br. 79 (emphasis omitted). As demonstrated, *supra*, the injuries established by IRAP, HIAS, and MESA independently confer standing and support issuance of a nationwide injunction based on the facial invalidity of the challenged provisions. The Fourth Circuit never addressed the standing of any other plaintiff—nor did it need to do so. Instead, the Fourth Circuit accurately reasoned that, "because we find that at least one Plaintiff possesses standing, we need not decide

whether the other individual Plaintiffs or the organizational Plaintiffs have standing with respect to this claim." *Int'l Refugee Assistance Project*, 857 F.3d at 586.[4]

With regard to the Ninth Circuit injunction, the government argues that "[a]ny injuries to Hawaii's university system . . . could be fully redressed by an injunction tailored to particular, identified students or faculty whom Hawaii has enrolled or hired." Pet. Br. 81. This argument, of course, ignores entirely the fact that Hawaii has suffered direct and quantifiable harm as a result of the loss of tourism revenue resulting from the travel ban. Further, this argument fails to account for the inability of the University of Hawaii to attract students and faculty, which results in harm to the State university system no less than the loss of "identified students or faculty whom Hawaii has enrolled or hired."

Accordingly, only an injunction on a nationwide scale would redress the legal defects in EO-2.

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[4] For this same reason, petitioners' argument that the Fourth Circuit wrongly relied upon plaintiffs throughout the United States in fashioning the injunction even though the Fourth Circuit "did not hold that any respondent besides Doe #1 had standing—and even his claimed injury has been eliminated," Pet. Br. 82, is misplaced. The organizational plaintiffs have standing to challenge EO-2 and the provisions of EO-2 are invalid no matter where they are sought to be enforced.

B. The Need For Uniform Application Of The Immigration Laws Independently Supports Affirmance Of The Nationwide Injunctions

Separately, as the government acknowledges, "[b]oth courts of appeals also concluded that categorical relief is appropriate because 'Congress has made clear that the immigration laws of the United States should be enforced vigorously and uniformly.'" Pet. Br. 82 (quoting J.A. 244; citing J.A. 1233).[5] This rationale independently supports affirmance of the nationwide injunctions.

As a general matter, "[f]ederal law makes a single sovereign responsible for maintaining a comprehensive and unified system to keep track of aliens within the Nation's borders." *Arizona v. United States*, 567 U.S. 387, 401–02 (2012); *see also id.* at 395 ("Immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this

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[5] The Washington district court, which first enjoined EO-1, also determined that the injunction should issue on a national scale. *Washington*, 2017 WL 462040, at *2 ("Although Federal Defendants argued that any TRO should be limited to the States at issue, the resulting partial implementation of the Executive Order 'would undermine the constitutional imperative of a *uniform* Rule of Naturalization and Congress's instruction that the immigration laws of the United States should be enforced vigorously and *uniformly*.'" (quoting *Texas*, 809 F.3d at 187-88)).

country who seek the full protection of its laws."). Individualized application of EO-2 based on the relationship of an individual with a respondent would serve to undermine such uniform application, thus justifying issuance of a nationwide injunction.

While the government points to the severability clause in EO-2 to support a more narrowly tailored injunction, Pet. Br. 83, that provision does not support narrowing the injunction. Section 15(a) of EO-2 provides that, if "application of any provision to any person or circumstance[] is held to be invalid," then "the application of [the Order's] other provisions to any other persons or circumstances shall not be affected." 82 Fed. Reg. at 13,218. As explained, *supra*, however, the challenged provisions were held invalid in *all* circumstances because they are facially invalid. Thus, the severability provision actually supports, rather than undermines, the nationwide scope of the injunction.

As a practical matter, EO-2 is framed in terms of entry into the United States and not linked (as a visa may be) to the purpose of the entry. Thus, an injunction must be nationwide because an individual's travel plans may result in entry through any port of entry. The government's approach would not enjoin application of the travel or refugee ban but rather would require the application of an entirely different standard to refugees, tourists, students, and faculty, based on whether a specific refugee has "concrete plans to resettle in Hawaii," Pet. Br. 81, whether a tourist was headed to the beach in Hawaii, whether a student plans to study at the University of Hawaii, or whether an individual plans to attend MESA's conference.

Similarly, to the extent Section 6(b) lowers the cap on the number of refugees, the government's approach could have the effect of directing refugees to Hawaii, making such a limitation illogical. For a similar reason, the Fifth Circuit in *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), held that "a geographically-limited injunction would be ineffective" because the plaintiffs affected by the order would be subject to different immigration laws simply by moving between states. *Id.* at 188. Here, too, such non-uniform application of the law across the country would impose a two-tiered system of immigration—one applicable to an unknown number of individuals with ties to the respondents here and one applicable to anyone else. Such a confusing and segmented approach would result in chaos.

Finally, such a non-uniform approach to entry into the United States would conflict with the stated purpose for imposing the travel and refugee bans. Far from "temporarily reduc[ing] investigative burdens on relevant agencies," 82 Fed. Reg. at 13,213, as stated in Section 2(c) of EO-2, the burden would increase. This Court need only look to the effect of EO-1, which resulted in increased burdens on the entities responsible for determining the ability of an individual to enter the country, to confirm this fact. This sort of improvised application of federal law is precisely the harm that a uniform system of immigration is intended to avoid. Accordingly, the need for the uniform application of immigration alone justifies the nationwide injunctions.

CONCLUSION

The judgments of the Fourth and Ninth Circuits should be affirmed.

Respectfully submitted,

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